

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ADVANCED FRICTION MATERIALS CO.,

Plaintiff/Counter Defendant-  
Appellee/Cross-Appellant,

v

STERLING-DETROIT CO.,

Defendant/Counter-Plaintiff-  
Appellant/Cross-Appellee.

UNPUBLISHED

July 20, 2001

No. 216543

Oakland Circuit Court

LC No. 95-510130-CK

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Before: Neff, P.J., and Holbrook, Jr., and Jansen, JJ.

PER CURIAM.

Defendant appeals by leave granted from an order granting a new trial. Plaintiff cross-appeals by right from the same order and challenges the trial court's denial of its motion for judgment notwithstanding the verdict (JNOV). We affirm.

Plaintiff manufactures automatic transmission bands. Defendant designs, builds and sells automated and semi-automated manufacturing equipment. Plaintiff was awarded a contract to supply transmission bands to General Motors Corporation (GM) for use in GM's Northstar engine. Apparently, plaintiff did not have all of the equipment it needed to manufacture the bands in their entirety at plaintiff's facilities. In two separate purchase orders, plaintiff contracted with defendant to supply two of the missing components: a "heat treat system" and a "splitter." For a variety of reasons, the components were not delivered and installed on time.

Thereafter, plaintiff sued defendant for breach of contract, alleging that the components were not manufactured according to the design specifications, that delivery was untimely, and that the components were defective because they failed to operate as intended. Defendant counterclaimed for breach of contract, alleging that plaintiff had failed to pay certain amounts remaining on the two contracts, as well as monies due for subsequent equipment supplied by defendant. Plaintiff stipulated to the amounts unpaid. The jury returned a verdict of no cause of action on both the claim and counterclaim.

The verdict form was divided into two pages. The first page concerned plaintiff's breach of contract claims, the second page concerned defendant's counterclaims. The first question on the first page asked whether defendant breached "any contract or any express or implied warranty

with” plaintiff. The word “No” was circled and “No” was written on a provided blank line. The jurors were instructed not to answer any of the other two questions on the page (regarding damages) if they answered “No” to the first question. The second page was divided into seven subsections, each addressing different components or pieces of equipment supplied to plaintiff. Items (a) and (b) on the verdict form submitted by defendant represented defendant’s counterclaims for the amounts yet unpaid on the original contracts for the heat treat system and the splitter. Items (c) through (g) represent additional items supplied by defendant. The jury responded that plaintiff was not liable for any of the unpaid invoices represented by items (a) through (g).

Subsequently, both parties moved for JNOV and in the alternative new trial. The trial court denied both motions for JNOV. However, the trial court agreed with plaintiff’s argument that the verdicts were inconsistent, and thus granted plaintiff’s motion for a new trial.

Defendant appeals from the circuit court’s order granting a new trial, arguing that the trial court improperly delved into the minds of the jurors when granting plaintiff’s motion for a new trial. Plaintiff cross-appeals, arguing that the trial court erred in denying its motion for JNOV because the jury’s verdict is contrary to the great weight of the evidence. In the alternative, plaintiff contends that the trial court appropriately granted a new trial because the jury’s no cause verdicts for both parties were inconsistent.

A trial court’s decision to grant a motion for a new trial is reviewed for an abuse of discretion. *Setterington v Pontiac General Hospital*, 223 Mich App 594, 608; 568 NW2d 93 (1997). An abuse of discretion occurs where the decision to grant a new trial was “so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias.” *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959). “In reviewing a circuit court’s decision . . . [on] a motion for new trial, the reviewing court must not substitute its own view of the evidence.” *Bean v Directions Unlimited, Inc.*, 462 Mich 24, 32; 609 NW2d 567 (2000).

We conclude that the trial court did not abuse its discretion in ordering a new trial. After finding that defendant had not breached “any contract or any express or implied warranty” with plaintiff, the jury found that plaintiff had not breached any contract by failing to pay the amounts remaining on the heat treat system and the splitter, as well as the other equipment supplied. We agree with the trial court that given the layout and language employed in the verdict form, the verdict of no cause of action for both parties is inconsistent. If defendant did not breach its contracts to supply the heat treat system and the splitter, and given plaintiff’s admission that it still owed certain amounts on the contract prices for those components, it is inconsistent to find that plaintiff is not in breach for failure to pay these amounts due. As for the other items covered in defendant’s counterclaim, given the connection between these items and the contracts for sale of the heat treat system and splitter, we believe that these claims should also be relitigated at a new trial.

We also conclude that the trial court did not err in denying plaintiff’s motion for JNOV.

In reviewing a trial court's decision regarding a motion for . . . JNOV, this Court views the evidence presented . . . in the light most favorable to the nonmoving party to determine whether a factual question exists with regard to which reasonable minds could differ. Without a clear abuse of discretion, the trial court's decision to deny JNOV . . . will not be disturbed on appeal. [*Anton v State Farm Mutual Automobile Ins Co*, 238 Mich App 673, 683; 607 NW2d 123 (1999).]

For purposes of this issue, defendant is considered the nonmoving party.

After reviewing the record, we conclude that sufficient evidence was presented for a reasonable jury to conclude that defendant had not breached the two contracts involving the heat treat system and the splitter. Although plaintiff's witnesses testified extensively concerning the poor performance and subsequent output of the entire assembly line to be constructed by defendant, there was also significant evidence adduced concerning confusion in delivery dates, rushed delivery of the equipment, and the inability of defendant to set up and evaluate the line at its own facility before it was shipped to plaintiff's factory. There was also evidence that plaintiff's facilities were not fully ready to operate the line on the alleged due dates for the two components. It is conceivable that the jury was persuaded by the arguments of defendant regarding the improper location of the initial set-up and operation of the machine. Further, it is also plausible that the jury could have concluded that other components of the assembly line and human error could have just as easily been the cause of poor output and high scrap records.

Affirmed.

/s/ Janet T. Neff

/s/ Donald E. Holbrook, Jr.